

REMARKS

Claim 1 has been amended to recite the limitation of surgically implanting said device. Claim 1 has also been amended to state that the band is encircled around internal body tissue. Support for this can be found in the specification at paragraph 1, and in Figure 3. Accordingly, no new matter is involved.

In the previous office action the Examiner rejected Applicants' claims under 25 USC 102 as being unpatentable over Tubbs (US 6629942). Applicants respectfully disagree with this rejection. Tubbs discloses in column 5, line 25 that Figures 4 and 5 disclose the orientation of the device "[i]n usage". As seen from those figures, the encircling step disclosed in Tubbs causes the band to take on a concave cross-section, not a substantially planer cross-section. In addition, Applicants have added the above limitations, clearly not disclosed by Tubbs.

Therefore, Applicant submits that claim 1 is fully allowable over the prior art cited by the Examiner. Consequently, it is respectfully requested that the Examiner withdraw the 35 U.S.C. 102 rejection to claim 1. In addition, because all other claims depend from claim 1, likewise they are also allowable over the prior art and applicant requests that the prior art rejections to these claims also be withdrawn. Applicant respectfully requests that the Examiner re-examine and favorably reconsider Applicant's claims in the form of a Notice of Allowance.

Respectfully submitted,

/Dean L. Garner/

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DATED: 4 April 2008